

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAREN T. HUGHLEY and U.S. POSTAL SERVICE,  
WARD PLACE STATION, Washington, DC

*Docket No. 97-2296; Submitted on the Record;  
Issued August 5, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation benefits based on its determination that the selected position of file clerk fairly and reasonably represented appellant's wage-earning capacity.

The Board has duly reviewed the case record in this appeal and finds that the Office properly reduced appellant's compensation benefits based on its determination that the selected position of file clerk fairly and reasonably represented appellant's wage-earning capacity.

The Board hereby adopts the facts as accurately set forth in the Office's hearing representative's decision dated April 12, 1997.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction of benefits.<sup>1</sup> Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.<sup>2</sup> Accordingly, the evidence must establish that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. Generally, efforts to reemploy an injured worker are focused on reemployment possibilities with the employing establishment.<sup>3</sup> Where reemployment with the

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<sup>1</sup> *James B. Christenson*, 47 ECAB 775 (1996); *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992); *David W. Green*, 43 ECAB 883 (1992); *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Samuel J. Chavez*, 44 ECAB 431 (1993); *see* 5 U.S.C. § 8115(a); 2 A. Larson, *The Law of Workers' Compensation* 57.22 (1989); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814 (December 1993).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*,

employing establishment is not possible, the vocational rehabilitation counselor assists in either additional job training or in job placement efforts. Where vocational rehabilitation efforts are unsuccessful, Office procedures instruct the vocational rehabilitation counselor to identify three positions from the Department of Labor's *Directory of Occupational Titles* and obtain information from the state employment service with respect to the availability and wage rate of the position.<sup>4</sup> The procedures provide for the claims examiner to select one of the positions in view of such factors as appellant's skills, aptitude, mental alertness, personality factors, *etc.* and to determine the medical suitability taking into consideration medical conditions due to the accepted work-related injury and any preexisting medical condition. Medical conditions arising subsequent to the work-related injury or disease are specifically excluded from consideration.<sup>5</sup>

In the present case, appellant contended that her emotional condition was aggravated by the embarrassment and humiliation she experienced when she was denied permission to attend classes to become a court reporter, which was approved by the Office, due to the Office's mishandling of her rehabilitation case. In support of her contention, appellant submitted an April 26, 1996 medical report of Dr. Frances E. Rankin, a Board-certified psychiatrist and appellant's treating physician. In this report, Dr. Rankin provided a history of appellant's accepted May 10, 1994 employment-related emotional condition and medical treatment. Dr. Rankin further provided a description of appellant's reaction to her failure to enroll in a school to become a court reporter due to the Office's failure to pay the tuition. Additionally, Dr. Rankin provided that appellant stated that when she fully examined the demands of the court reporter position along with her feelings of humiliation and anger, the position would be too stressful. Dr. Rankin indicated findings on mental examination and diagnosed depression. Dr. Rankin then opined that appellant's best level of function could not be determined, that since the date of appellant's employment injury, she demonstrated a limited capacity to adjust to adversity and that although appellant's current status was less severe than her initial evaluation, she had a certain rigidity in style that left her vulnerable to regression and depression. Regarding appellant's treatment, Dr. Rankin recommended that appellant undergo supportive psychotherapy, that she take Prozac Xanax, that rehabilitation plans include a low stress job, thorough research by appellant of the positive and negative aspects that she can anticipate and that appellant receive counseling in coping strategies for a range of possibilities at school and/or work. The Board has held that matters involving the processing of workers' compensation claims by the employing establishment or the Office are not employment factors under the Federal Employees'

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Chapter 2.813.6(b) (December 1993).

<sup>4</sup> See *Carla Letcher*, 46 ECAB 452 (1995); *Wilson L. Clow*, *supra* note 1; *Harold D. Snyder*, 38 ECAB 763 (1987); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8 (December 1993).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8(d) (December 1993).

Compensation Act.<sup>6</sup> Inasmuch as appellant has not established a compensable employment factor under the Act, Dr. Rankin's medical report is insufficient to establish that appellant was unable to perform the duties of a file clerk. There is no other medical evidence of record establishing that appellant was unable to perform the duties of a file clerk.

Accordingly, the Board finds that the Office properly determined that appellant was no longer totally disabled as a result of her May 10, 1994 employment-related emotional condition and followed established procedures for determining that the position of file clerk fairly and reasonably represented appellant's wage-earning capacity. The Board, therefore, finds that the Office has met its burden of proof in reducing appellant's compensation for total disability.

The April 12, 1997 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

Dated, Washington, D.C.  
August 5, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *Thomas J. Costello*, 43 ECAB 951 (1992); *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Jeffrey S. Miller*, 41 ECAB 707 (1990); *Catherine Adams*, 39 ECAB 829 (1988); *Elvira B. Lightner*, 39 ECAB 118 (1987); *Ralph O. Webster*, 38 ECAB 521 (1987); *Virgil M. Hilton*, 37 ECAB 806 (1986).